

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS METROPOLITAN
POLICE DEPARTMENT,
Appellant/Cross-Respondent,

vs.

AMERICAN BROADCASTING
COMPANIES, INC.; THE
ASSOCIATED PRESS; CABLE NEWS
NETWORK, INC.; CHESAPEAKE
MEDIA I, LLC, D/B/A KSNV-TV; LOS
ANGELES TIMES
COMMUNICATIONS, LLC; THE NEW
YORK TIMES COMPANY; SCRIPPS
BROADCASTING HOLDINGS, LLC;
WP COMPANY, LLC, D/B/A THE
WASHINGTON POST,

Respondents,

LAS VEGAS REVIEW-JOURNAL,
Respondent/Cross-Appellant.

Electronically Filed
Jun 11 2018 12:42 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

SUPREME COURT CASE NO.:
75518

DISTRICT COURT CASE NO.:
A764030; A764169

**DOCKETING STATEMENT
CIVIL APPEALS**

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal. A complete list of the

documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions. This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District: Eighth Department: XXIII
County: Clark Judges: Hon. Stefany Miley (previously
Hon. Richard F. Scotti)
District Ct. Case Nos.: A-17-764030-W and A-17-764169-W
2. **Attorney(s) filing this docketing statement:**
Attorney(s): Margaret A. McLetchie Telephone: (702) 728-5300
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Client(s): Las Vegas Review-Journal

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. **Attorney(s) representing cross-respondent(s):**
Attorney(s): Craig R. Anderson Telephone: (702) 382-0711
Nick D. Crosby
Jackie V. Nichols
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Address: 10001 Park Run Drive
Las Vegas, NV 89145
Client(s): Las Vegas Metropolitan Police Department

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Attorney(s) representing respondent(s):

Attorney(s): Joel E. Tasca

Telephone: (702) 471-7000

Justin A. Shiroff

Firm: Ballard Spahr

Address: 1980 Festival Plaza Drive
Las Vegas, NV 89135

Client(s): American Broadcasting Companies, Inc., The Associated Press,
Cable News Network, Inc., Chesapeake Media I, LLC, d/b/a
KSNV-TV, Los Angeles Times Communications, LLC, The
New York Times Company, and WP Company LLC d/b/a The
Washington Post

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| ☐ Judgment after bench trial | ☐ Dismissal: |
| ☐ Judgment after jury verdict | ☐ Lack of jurisdiction |
| ☐ Summary judgment | ☐ Failure of state claim |
| ☐ Default judgment | ☐ Failure to prosecute |
| ☐ Grant/Denial of NRCP 60(b) relief | ☐ Other (specify) |
| ☐ Grant/Denial of injunction | ☐ Divorce Decree: |
| ☐ Grant/Denial of declaratory relief | ☐ Original ☐ Modification |
| ☐ Review of agency determination | ☒ Other disposition (specify): |
| | <u>Order granting Petition for Writ of</u> |
| | <u>Mandamus Pursuant to Nevada's</u> |
| | <u>Public Records Act</u> |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
☐ Venue
☐ Termination of parental rights

n/a

6. Pending and prior proceedings in this court.

None.

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7. Pending and prior proceedings in other courts.

Respondent/Cross-Appellant the Las Vegas Review-Journal (“Review-Journal”) filed a Motion for Attorney’s Fees and costs in consolidated Eighth Judicial District Court Case No. A-17-764030-W on April 19, 2018. That motion is currently being briefed and is scheduled for argument on June 19, 2018.

After this Court entered an Order on April 27, 2018 denying the Las Vegas Metropolitan Police Department’s (“Metro’s”) emergency motion for a stay, the Review-Journal filed a Motion for Order to Show Cause, Request to Issue Sanctions, and Request for Emergency Status Check on Order Shortening Time on May 18, 2018 to address issues with Metro’s failure to comply with the district court orders. The district court conducted a hearing on the Review-Journal’s motion on May 29, 2018 and directed the parties to submit supplemental briefing regarding whether Nev. Rev. Stat. § 239.011 requires a governmental entity to produce records to a requester who prevails in a petition for public records prior to making the records generally available to non-parties. The Review-Journal submitted a supplemental brief on this issue on June 1, 2018; briefing is still pending and is scheduled for argument on June 19, 2018.

8. Nature of the action.

This cross-appeal seeks review of two orders entered by the district court pertaining to a petition for writ of mandamus submitted pursuant to the Nevada Public Records Act (“NPRA”), Nev. Rev. Stat. § 239.011(2) after Appellant/Cross-Respondent the Las Vegas Metropolitan Police Department (“Metro”) declined to produce certain public records pertaining to the shooting which occurred on October 1, 2017 at the Route 91 Harvest Music Festival in Las Vegas, Nevada. On March 2, 2018, the district court entered and noticed an Order (the “Disclosure Order”) granting the petition. In the order, the district court allowed Metro to redact certain information. The Disclosure Order also found that the NPRA required the Review-Journal and other media petitioners to pay fees associated with the production of the requested records and ordered the parties to submit supplemental briefing regarding to amount to be charged with respect to the production of the records. On March 9, 2018, without holding an evidentiary hearing, the district court entered and noticed another order (the “Fees Order”) pertinent to the records request. The Fees Order properly denied some of Metro’s request to charge fees for the production of some records but permitted Metro to charge certain fees for the production of certain responsive public records, some of which are not permitted by law. The Fees Order also gave Metro at least six months to produce records.

9. Issues on cross-appeal.

- (1) Whether, in granting the Review-Journal's petition in its Disclosure Order, the district court erred by not requiring Metro to provide the Review-Journal and the other media petitioners with a log documenting what records it has that are responsive to the media parties' records requests and that Metro contended should be treated as confidential. *See Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 883-84 266 P.3d 623, 629 (2011) (holding that "after the commencement of an NPRA lawsuit, the requesting party generally is entitled to a log unless . . . the state entity withholding the records demonstrates that the requesting party has sufficient information to meaningfully contest the claim of confidentiality without a log")
- (2) Whether the district court erred in its Disclosure Order by finding that Metro did not waive its ability to assert confidentiality privileges apply to any of the records requested by the Review-Journal when Metro failed to respond to the Review-Journal's requests in the manner prescribed by the NPRA, Nev. Rev. Stat. § 239.0107(1).
- (3) Whether the permissible redactions outlined in the Disclosure Order were unclear and overbroad.
- (4) Whether the district court erred in its disclosure order.
- (5) Whether the district court's pronouncement in its Fees Order that Metro had a "minimum period of six months" to produce all the requested records conflicts with the NPRA's purpose of fostering democratic principles by providing members of the public with speedy access to inspect and copy records.
- (6) Whether the district court erred by determining the permissible fees Metro may charge in producing documents responsive to the petitioners' requests without conducting an evidentiary hearing.
- (7) Whether the district court erroneously found in its Fees Order that a dispatch log is a "geographic information service" as defined by Nev. Rev. Stat. § 239.054 and improperly allowed Metro to charge petitioners certain fees regarding dispatch logs.
- (8) Whether the district court erred in its Fees Order.

10. Pending proceedings in this court raising the same or similar issues.

Las Vegas Review-Journal v. City of Henderson, Case No. 73287

Clark County School District v. Las Vegas Review-Journal, Case No. 73525

Clark County Office of the Coroner/Medical Examiner v. Las Vegas Review-Journal, Case No. 74604

These cases are similar to the extent they involve records requests by the media and challenges to the nondisclosure by the public entity.

11. Constitutional issues.

☒ N/A

☐ No

☐ Yes

If not, explain: n/a

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

This cross-appeal presents important questions of public policy and three substantial issues of first impression. First, this cross-appeal raises a substantial issue of first impression regarding whether the NPRA permits a governmental entity to charge requesters a fee for conducting a privilege review of public records. Second, this cross-appeal raises a substantial issue of first impression regarding whether a governmental entity waives its ability to assert claims of confidentiality apply to public records when it fails to assert those privileges in the manner required by Nev. Rev. Stat. § 239.0107(1). Third, the cross-appeal raises a substantial issue of first impression regarding statutory interpretation of Nev. Rev. Stat. § 239.054; specifically, this cross-appeal asks the Court to interpret what constitutes a “geographic information system” under § 239.054 of the NPRA.

13. Assignment to the Court of Appeals or retention in the Supreme Court.

This case is presumptively retained by the Supreme Court because it is not a matter that would be presumptively assigned to the Court of Appeals under NRAP 17(b). Moreover, this matter is presumptively retained by the Supreme Court pursuant to NRAP 17(a)(13) as it raises as principal issues matters of first impression. Additionally, this matter is also subject to retention by the Supreme Court pursuant to NRAP 17(a)(14) as this case raises as principal issues questions of statewide public importance.

14. Trial.

n/a

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice? No.

TIMELINESS OF NOTICE OF CROSS-APPEAL

16. Date of entry of written judgment or order appealed from:

March 2, 2018 and March 9, 2018.

17. Date written notice of entry of judgment or order was served:

March 2, 2018.

Was service by:

☐ Delivery

☒ Mail/electronic/fax

No notice of entry of order was served regarding the March 9, 2018 order as that Order was entered by the District Court.

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b)

Date of filing:

☐ NRCP 52(b)

Date of filing:

☐ NRCP 59

Date of filing:

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See *AA Primo*

***Builders v. Washington*, 126 Nev. 578, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion:

(c) Date written notice of entry of order resolving tolling motion was served:

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed: March 30, 2018, April 13, 2018

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

Appellant/Cross-Respondent the Las Vegas Metropolitan Police Department filed a notice of appeal on March 30, 2018. Respondent/Cross-Appellant the Las Vegas Review-Journal filed a timely notice of cross-appeal on April 13, 2018. *See* NRAP 4(a)(2) (providing that if a party files a notice of appeal, any other party may file a subsequent notice of appeal within 14 days after the first notice of appeal was filed).

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)(2).

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

☒ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376 (b)

☐ Other (specify)

(b) Explain how each authority provides a basis for appeal from the judgment or order:

NRAP 3A(b)(1) allows for appeal of a final judgment of a district court. On March 2, 2018, the district court entered an Order granting the Review-Journal's petition for public records pertaining to the 1 October shooting. On March 9, 2018, the district court entered an order outlining permissible fees Metro may charge in producing those records. Thus, the district courts orders constitute a final judgment pursuant to NRAP 3A(b)(1).

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Plaintiff/Petitioner (now Respondent/Cross-Appellant):

The Las Vegas Review-Journal

Defendant/Respondent (now Appellant/Cross-Respondent):

Las Vegas Metropolitan Police Department

Plaintiff/Petitioners (no Respondents):

American Broadcasting Companies, Inc.

The Associated Press

Cable News Network, Inc.

Chesapeake Media I, LLC, d/b/a KSNV-TV

Los Angeles Times Communications, LLC

The New York Times Company

WP Company LLC d/b/a The Washington Post

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

n/a

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Respondent/Cross-Appellant the Review-Journal filed a Public Records Act Application/Petition for Writ of Mandamus pursuant to the NPRA, Nev. Rev. Stat. § 239.011, seeking a variety of records pertaining to the 1 October shooting. In its petition and subsequent filings with the district court, the Review-Journal asserted that the NPRA prohibits a governmental entity from charging requesters for staff time associated with review and production of the requested records. The Review-Journal's case was consolidated with the public records matter initiated by the other media petitioners, who were also seeking access to various records pertaining to the 1 October shooting. The Review-Journal subsequently joined in the other media petitioners' records requests.

Appellant/Cross-Respondent Metro asserts the requested records should not be disclosed pursuant to the balancing test set forth by this Court in *Donrey of Nevada, Inc. v. Bradshaw*, 106 Nev. 630, 798 P.2d 144 (1990) and its progeny. Metro also asserts it is permitted to charge staff time for actual costs it incurs in producing the

requested records.

On March 2, 2018, the district court entered an order granting the Review-Journal's petition and directing Metro to produce the requested records. Subsequently, on March 9, 2018, the district court entered an order limiting the cost of staff time Metro is permitted to charge for pre-copy preparations to 50 cents per page.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☐ Yes

☒ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

Respondent/Cross-Appellant the Las Vegas Review-Journal ("Review-Journal") filed a Motion for Attorney's Fees and costs in consolidated Eighth Judicial District Court Case No. A-17-764030-W on April 19, 2018. That motion is currently being briefed and is scheduled for argument on June 19, 2018.

After this Court entered an Order on April 27, 2018 denying Metro's emergency motion for a stay, the Review-Journal filed a Motion for Order to Show Cause, Request to Issue Sanctions, and Request for Emergency Status Check on Order Shortening Time on May 18, 2018 to address issues with Metro's compliance with the district court's order March 2, 2018 Order granting the Review-Journal's public records petition. The district court conducted a hearing on the Review-Journal's motion on May 29, 2018, and directed the parties to submit supplemental briefing regarding whether Nev. Rev. Stat. § 239.011 requires a governmental entity to produce records to a requester who prevails in a petition for public records prior to making the records generally available to non-parties. The Review-Journal submitted a supplemental brief on this issue on June 1, 2018; briefing is still pending and is scheduled for argument on June 19, 2018.

(b) Specify the parties remaining below:

///

///

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

26. If you answered “No” to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

The orders are independently appealable under NRAP 3A(b)(8).

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order.

Attached hereto are the following: (1) Amended Public Records Act Application Pursuant to Nev. Rev. Stat. § 239.001/ Petition for Writ of Mandamus (Expedited Matter Pursuant to Nev. Rev. Stat. § 239.011; (2) Notice of Entry of Order Granting Amended Public Records Act Application Pursuant to Nev. Rev. Stat. § 239.001/ Petition for Writ of Mandamus; and (3) Order Regarding Public Records Request.

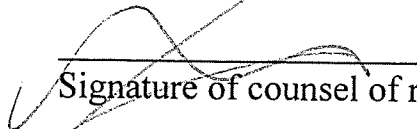
VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Las Vegas Review-Journal
Name of Appellant

Margaret A. McLetchie
Name of counsel of record

June 8, 2018
Date


Signature of counsel of record

State of Nevada, County of Clark
State and County where signed

CERTIFICATE OF SERVICE

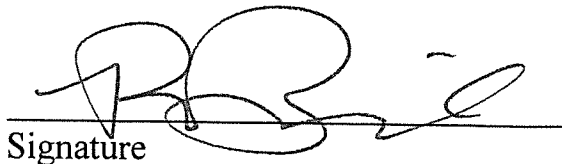
I certify that on the 8th day of June, 2018, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or ☒ **By mailing it by first class mail with sufficient postage prepaid to the following address(es):**

Craig R. Anderson, Nick D. Crosby, and Jackie V. Nichols
MARQUIS AURBACH COFFING
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DATED this 8th day of June, 2018.


Signature

1

Steven D. Grierson

1 **APET**

2 MARGARET A MCLEATCHIE, Nevada Bar No. 10931

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Counsel for Petitioner, Las Vegas Review-Journal

7 **DISTRICT COURT**

8 **CLARK COUNTY NEVADA**

9 AMERICAN BROADCASTING
10 COMPANIES, INC.; THE ASSOCIATED
11 PRESS; CABLE NEWS NETWORK,
12 INC.; CHESAPEAKE MEDIA I, LLC,
13 D/B/A KSNV-TV; LOS ANGELES
14 TIMES COMMUNICATIONS, LLC; THE
15 NEW YORK TIMES COMPANY; AND
16 WP COMPANY LLC D/B/A THE
17 WASHINGTON POST,

18 Petitioners,

19 v.

20 LAS VEGAS METROPOLITAN POLICE
21 DEPARTMENT,

22 Respondent.

23 LAS VEGAS REVIEW-JOURNAL,

24 Petitioner,

25 v.

26 LAS VEGAS METROPOLITAN POLICE
27 DEPARTMENT,

28 Respondent.

Case No.: A-17-764030-W

Dept. No.: II

**AMENDED PUBLIC RECORDS
ACT APPLICATION PURSUANT
TO NEV. REV. STAT. § 239.001/
PETITION FOR WRIT OF
MANDAMUS**

**EXPEDITED MATTER PURSUANT
TO NEV. REV. STAT. § 239.011**

Case No.: A-17-764169-W

Dept. No.: XXVI

**AMENDED PUBLIC RECORDS ACT
APPLICATION PURSUANT TO
NEV. REV. STAT. § 239.001/
PETITION FOR WRIT OF
MANDAMUS**

**EXPEDITED MATTER PURSUANT
TO NEV. REV. STAT. § 239.011**

///

COMES NOW Petitioner the Las Vegas Review-Journal ("Review-Journal") by and through its undersigned counsel, and hereby submits this Amended Petition for Writ of Mandamus for declaratory and injunctive relief and seeking an order requiring the Las Vegas Metropolitan Police Department ("LVMPD") to provide Petitioner access to public records. Petitioner also requests an award for all fees and costs associated with its efforts to obtain withheld public records as provided for by Nev. Rev. Stat. § 239.011(2). Further, Petitioner respectfully requests the Court expedite this matter pursuant to Nev. Rev. Stat. § 239.011(2).

Petitioner hereby alleges as follows:

NATURE OF ACTION

1. Petitioner brings the application for relief pursuant to Nev. Rev. Stat. § 239.011. *See also Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 884 n.4, 266 P.3d 623, 630 n.4 (2011).

2. Petitioner's application to this Court is the proper means to secure the LVMPD's compliance with the Nevada Public Records Act ("NPRA"), Nev. Rev. Stat. § 239.001 *et seq. Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 884, 266 P.3d 623, 630 n.4 (2011); *see also DR Partners v. Bd. of Cty. Comm'rs of Clark Cty.*, 116 Nev. 616, 621, 6 P.3d 465, 468 (2000) (citing *Donrey of Nev. v. Bradshaw*, 106 Nev. 630, 798 P.2d 144 (1990)) (writ of mandamus is the appropriate procedural remedy to compel compliance with the NPRA).

3. Petitioner is entitled to an expedited hearing on this matter pursuant to Nev. Rev. Stat. § 239.011(2), which mandates that "[t]he court shall give this matter priority over other civil matters to which priority is not given by other statutes."

PARTIES

4. Petitioner, the Review-Journal, a daily newspaper, is the largest newspaper in Nevada. It is based at 1111 W. Bonanza Road, Las Vegas, Nevada, 89125.

5. Respondent, the LVMPD, is a public agency in the County of Clark, Nevada. The LVMPD is subject to the NPRA pursuant to Nev. Rev. Stat. § 239.005(5)(b).

1 **JURISDICTION AND VENUE**

2 6. This Court has jurisdiction to issue writs of mandamus. Nev. Const. art. VI,
3 § 6; Nev. Rev. Stat. § 34.160.

4 7. This Court has jurisdiction pursuant to Nev. Rev. Stat § 239.011, as the
5 court of Clark County where all relevant public records sought are held.

6 8. Venue is proper in the Eighth Judicial District Court of Nevada pursuant to
7 Nev. Rev. Stat. § 239.011. All parties and all relevant actions to this matter were and are in
8 Clark County, Nevada.

9 **STANDING**

10 9. Petitioner has standing to pursue this expedited action pursuant to Nev. Rev.
11 Stat. § 239.010 because public records it has requested from the LVMPD have been
12 unjustifiably withheld.

13 **FACTS**

14 ***October 2, 2017 Requests***

15 10. On October 2, 2017, the Review-Journal sent the LVMPD a request
16 pursuant to the NPRA requesting:

- 17 • A log and/or call slips of any and all emergency calls received on Sunday
18 October 1 between 8 p.m. and 2 a.m. regarding calls for service between the
19 3800 and 4000 blocks of South Las Vegas Blvd, including but not limited to
20 time stamps, origin/location and address of the originating call, reason for the
21 call, police patrol units dispatched including the patrol unit numbers, patrol unit
22 substation and time of dispatch and time of arrival; and
- 23 • A log and/or call slips of any and all emergency calls received on Sunday
24 October 1 between 8 p.m. and 2 a.m. regarding calls for service between the
25 3800 and 4000 blocks of South Las Vegas Blvd, including but not limited to
26 time stamps, origin/location and address of the originating call, reason for the
27 call, fire and ambulance units dispatched including, unit numbers and time of
28 dispatch and time of arrival.

(Exhibit ("Exh.") 1.)

11. Additionally, on October 2, 2017, the Review-Journal sent the LVMPD
requests pursuant to the NPRA for recordings of 911 calls for service received on October 1,

1 2017 between 8:00 p.m. and 2:00 a.m. between the 3800 and 4000 blocks of South Las Vegas
2 Blvd. (Exh. 2.)

3 12. Another reporter for the Review-Journal also sent a separate request for any
4 and all 911 calls relating to the shooting at the Route 91 Harvest Music Festival. (Exh. 3.)

5 13. On October 9, 2017, the Review-Journal contacted the LVMPD for an
6 update on its October 2, 2017 records requests. (Exh. 4.)

7 14. The LVMPD did not respond to the Review-Journal's records request until
8 October 18, 2017. (Exh. 5.) In its response, the LVMPD refused to provide any of the records
9 in the Review-Journal's request, claiming that because the records are purportedly "part of
10 an open investigation" they are "confidential and privileged pending the outcome of the
11 investigation." (*Id.*) Metro cited *Donrey v. Bradshaw*, 106 Nev. 360, 798 P2d 144 (1990) as
12 authority for its refusal. (*Id.*)

13 ***October 15, 2017 Request***

14 15. On October 15, 2017, the Review-Journal sent the LVMPD a records
15 request pursuant to the NPRA requesting "[p]urchase orders for any emergency purchases
16 on or after Oct. 1, 2017;" and "[c]opies of any emergency, no-bid contracts entered on or
17 after Oct. 1, 2017." (Exh. 6.)

18 16. As of the date of this filing, the LVMPD has not responded to this public
19 records request.

20 ***November 30, 2017 Request***

21 17. On November 30, 2017, the Review-Journal sent the LVMPD a records
22 request pursuant to the NPRA requesting "an opportunity to inspect or obtain copies of any
23 and all documents that reflect any weapons obtained through the course of the Oct. 1, 2017
24 Las Vegas mass shooting investigation that are suspected to have belonged to mass shooter
25 Stephen Paddock." (Exh. 7.) The request specifically encompassed "any returns on search
26 warrants and any documents reflecting any other weapons obtained through the course of the
27 investigation, either in Paddock's various properties - including but not limited to his car, his
28

1 Reno home and his Mesquite homes - and any other places or properties he stayed at or had
2 connections to, including but not limited to his Mandalay Bay corner suite. (*Id.*)

3 18. The LVMPD responded to the Review-Journal's November 30, 2017
4 records request by letter on November 30, 2017. (Exh. 8.)

5 19. In its November 30, 2017 response to the Review-Journal's November 30,
6 2017 request, the LVMPD stated, in conclusory fashion, that the requested records are "the
7 subject of an ongoing investigation/criminal case, and cannot be released without
8 jeopardizing the criminal case." (*Id.*) The LVMPD did not, however, explain how the release
9 of the requested records would jeopardize its investigation.

10 20. In its November 30, 2017 request, the LVMPD further stated that it was
11 denying the Review-Journal's request because the "requested record is not a public record
12 under NRS 239.010(1), and because the records are protected by the "law enforcement
13 privilege." (*Id.*) The LVMPD also cited *Donrey* as an additional basis for nondisclosure. (*Id.*)

14 21. The LVMPD also asserted in its response to the November 30, 2017 request
15 that although it is leading the investigation, other law enforcement agencies, including the
16 Federal Bureau of Investigation ("FBI"), may be in possession of records related to the
17 Review-Journal's request. (*Id.*, p. 2.)

18 22. The LVMPD also indicated in a separate November 30, 2017 email to the
19 Review-Journal that it should refer its records request to the FBI. (Exh. 9.)

20 23. Petitioner is willing to inspect the records in person.

21 LEGAL AUTHORITY

22 *Legal Framework*

23 24. The NPRA reflects that records of governmental entities belong to the
24 public in Nevada. Nev. Rev. Stat. § 239.010(1) mandates that, unless a record is confidential,
25 "all public books and public records of a governmental entity must be open at all times during
26 office hours to inspection by any person, and may be fully copied[.]" The NPRA reflects
27 specific legislative findings and declarations that "[its] purpose . . . is to foster democratic
28 principles by providing members of the public with access to inspect and copy public books

1 and records to the extent permitted by law” and that its provisions “must be construed
2 liberally to carry out this important purpose[.]” Nev. Rev. Stat. § 239.001(1) and (2).

3 25. Here, the LVMPD has not met its burden of establishing that the records it
4 is withholding should not be produced.

5 ***Failure to Timely Assert Claims of Confidentiality***

6 26. The NPRA provides that a governmental entity must provide timely and
7 specific notice if it is denying a request because the entity determines the documents sought
8 are confidential. Nev. Rev. Stat. § 239.0107(1)(d) states that, within five (5) business days
9 of receiving a request,

10 [i]f the governmental entity must deny the person’s request because the
11 public book or record, or a part thereof, is confidential, provide to the
12 person, in writing: (1) Notice of that fact; and (2) A citation to the specific
13 statute or other legal authority that makes the public book or record, or a
14 part thereof, confidential.

15 27. Accordingly, the LVMPD cannot rely on legal authority or bases for non-
16 disclosure it failed to timely assert in response to the October 2, 2017 and October 15, 2017
17 requests, and has waived any arguments against non-disclosure not timely raised.

18 ***The Records Sought Are Subject to Disclosure***

19 28. Even if it had timely asserted claims of confidentiality, the LVMPD did
20 not, and cannot, establish its heavy burden in withholding records.

21 29. In accordance with the presumption of openness and “emphasis on
22 disclosure,” both the NPRA and the Nevada Supreme Court place a high burden on a
23 governmental entity to justify disclosure.

24 30. First, the law requires that, if a governmental entity seeks to withhold or
25 redact a public record in its control it must prove by a preponderance of the evidence that
26 the record or portion thereof that it seeks to redact is confidential. *See* Nev. Rev. Stat. §
27 239.0113; *see also Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 882, 266 P.3d 623,
28 629 (2011); *accord Nevada Policy Research Inst., Inc. v. Clark Cty. Sch. Dist.*, No. 64040,
2015 WL 3489473, at *2 (D. Nev. May 29, 2015). It is of note that, as a general matter, “[i]t

1 is well settled that privileges, whether creatures of statute or the common law, should be
2 interpreted and applied narrowly.” *DR Partners v. Bd. of Cty. Comm’rs of Clark Cty.*, 116
3 Nev. 616, 621, 6 P.3d 465, 468 (2000) (citing *Ashokan v. State, Dept. of Ins.*, 109 Nev. 662,
4 668, 856 P.2d 244, 247 (1993)). This is especially so in the public records context: as noted
5 above, any restriction on disclosure “must be construed narrowly.” Nev. Rev. Stat. §
6 239.001(2)-(3).

7 31. Second, in addition to first establishing the existence of the privilege it
8 asserts and applying it narrowly, unless the privilege is absolute, the governmental entity
9 bears the burden of establishing that the interest in withholding documents outweighs the
10 interest in disclosure pursuant to the balancing test first articulated in *Donrey of Nevada v.*
11 *Bradshaw*, 106 Nev. 630, 798 P.2d 144 (1990). *See DR Partners v. Bd. of Cty. Comm’rs of*
12 *Clark Cty.*, 116 Nev. 616, 621, 6 P.3d 465, 468 (2000) (“Unless a statute provides an
13 absolute privilege against disclosure, the burden of establishing the application of a privilege
14 based upon confidentiality can only be satisfied pursuant to a balancing of interests.”); *see*
15 *also Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 879, 266 P.3d 623, 627 (2011)
16 (“...when the requested record is not explicitly made confidential by a statute, the balancing
17 test set forth in *Bradshaw* must be employed” and “any limitation on the general disclosure
18 requirements of Nev. Rev. Stat. § 239.010 must be based upon a balancing or ‘weighing’ of
19 the interests of non-disclosure against the general policy in favor of open government”).

20 32. Further, in applying the *Donrey* balancing test, the burden remains
21 squarely on the agency:

22 In balancing the interests . . . , the scales must reflect the fundamental right
23 of a citizen to have access to the public records as contrasted with the
24 incidental right of the agency to be free from unreasonable interference . . .
25 The citizen’s predominant interest may be expressed in terms of the burden
of proof which is applicable in this class of cases; the burden is cast upon
the agency to explain why the records should not be furnished.

26 *Id.* (quoting from *MacEwan v. Holm*, 226 Or. 27, 359 P.2d 413, 421–22 (1961) and citing
27 *Donrey*, 106 Nev. at 635–36, 798 P.2d at 147–48).

28 ///

1 33. Here, the LVMPD has not met its heavy burden. Indeed, the LVMPD has
2 not even attempted to identify any reason—beyond its bald assertion that the documents
3 sought are “part of an ongoing investigation”—that would outweigh the public’s
4 fundamental right of access to these documents. The public’s right is particularly important
5 here because the Review-Journal is seeking access to the records to report to the public on
6 one of the most devastating events in Las Vegas history.

7 34. Moreover, the *Donrey* factors do not support withholding the requested
8 records because (1) there are no pending or anticipated criminal proceedings; (2) there are
9 no confidential sources or investigative techniques; (3) there is no impact on any individual’s
10 right to a fair trial; and (4) disclosure would not jeopardize law enforcement. *See Donrey*,
11 106 Nev. at 635-36, 798 P.2d at 147-48.

12 35. Additionally, the Nevada Supreme Court has repeatedly emphasized that a
13 governmental entity cannot meet its burden of demonstrating that public records are
14 confidential with a non-particularized showing, *DR Partners*, 116 Nev. at 627–28, 6 P.3d at
15 472–73, or by expressing hypothetical concerns. *Reno Newspapers v. Sheriff*, 126 Nev. 211,
16 218-19, 234 P.3d 922, 927 (2010).

17 36. Notwithstanding the frequent press conferences that Las Vegas and federal
18 authorities conducted in the immediate aftermath of the massacre, now, a full month later,
19 significant questions remain unanswered about the shooter’s actions and the response of
20 public agencies.¹

21 37. The LVMPD’s blanket refusal to produce any of the records pursuant to the
22 Requests is improper, and all requested information and records should be produced without
23 redactions.

24
25 ¹ See, e.g., <https://www.reviewjournal.com/crime/shootings/questions-remain-in-las-vegas-strip-shooting-investigation/> (October 27, 2017 article detailing questions about the shooting investigation) (last accessed November 3, 2017); see also
26 <https://www.reviewjournal.com/crime/shootings/how-the-fbi-and-atf-are-aiding-the-las-vegas-shooting-investigation/> (detailing how federal investigative agencies are assisting the
27 LVMPD in investigating the October 1 mass shooting) (last accessed November 3, 2017).
28

38. For example, Nevada law provides that all recordings of phone calls received by the LVMPD through its 911 call center are “public records” as defined by the NPRA. *See Nev. Rev. Stat. § 239.010(1); see also Sparks, Nev. City Atty. Opinion Mem., Status of Records of 911 Calls to Dispatch and Dispatch Logs as “Public Records”* (Apr. 2, 2008) (concluding that “unless an exception exists, a copy of a 911 dispatch call must be made available to a person making a proper (*i.e.*, written) request.”), <http://cityofsparks.us/wp-content/uploads/2016/12/atty-opinion-2008-7.pdf>²; *cf. LVMPD v. Blackjack Bonding*, 131 Nev. Adv. Op. 10, 343 P.3d 608 (2015) (holding that records for telephones used by county jail inmates were related to the provision of a public service and thus were “public records” under the NPRA).

39. All the records requested by the Review-Journal are public records, and the LVMPD has not meet its heavy burden in establishing otherwise.

CLAIM FOR RELIEF

40. Petitioner re-alleges and incorporates by reference each and every allegation contained in Paragraphs 1-39 as if fully set forth herein.

41. Petitioner should be provided with the records it has requested pursuant to the NPRA.

42. The records sought are subject to disclosure, and Respondent has not met its burden of establishing otherwise.

43. A writ of mandamus is necessary to compel Respondent's compliance with the NPRA.

WHEREFORE, Petitioner prays for the following relief:

1. That the Court resolve this matter on an expedited basis as mandated by Nev. Rev. Stat. § 239.011;

2. Injunctive relief ordering the LVMPD to immediately make available complete copies of all Records requested without charging fees, other than permissible fees

² Last accessed November 3, 2017.

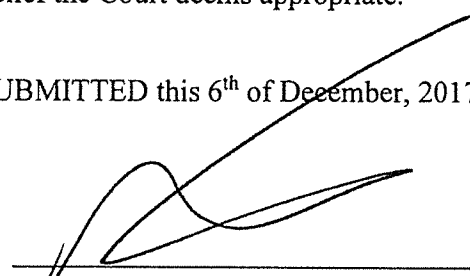
1 should the Petitioners request copies;

2 3. Declaratory relief;

3 4. Reasonable costs and attorney's fees; and

4 5. Any further relief the Court deems appropriate.

5
6 RESPECTFULLY SUBMITTED this 6th of December, 2017.

7
8
9 
MARGARET A MCLETCHIE, Nevada Bar No. 10931

10 ALINA M. SHELL, Nevada Bar No. 11711

11 **MCLETCHIE SHELL LLC**

12 701 East Bridger Ave., Suite 520

13 Las Vegas, Nevada 89101

14 Telephone: (702) 728-5300; Fax: (702) 425-8220

15 Email: maggie@nvlitigation.com

16 *Counsel for Petitioner, Las Vegas Review-Journal*

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MCLETCHIE SHELL
ATTORNEYS AT LAW
701 EAST BRIDGER AVE., SUITE 520
LAS VEGAS, NV 89101
(702) 728-5300 (T) / (702) 425-8220 (F)
WWW.NVLITIGATION.COM

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of December, 2017, pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing AMENDED PUBLIC RECORDS ACT APPLICATION PURSUANT TO NEV. REV. STAT. § 239.001/ PETITION FOR WRIT OF MANDAMUS - EXPEDITED MATTER PURSUANT TO NEV. REV. STAT. § 239.011 in *American Broadcasting Companies, Inc., et al. v. Las Vegas Metropolitan Police Department*, Clark County District Court Case No. A-17-764030-W, to be served electronically using the Odyssey File & Serve electronic filing service system, to all parties with an email address on record.

I hereby further certify that on the 6th day of December, 2017, Pursuant to Nev. R. Civ. P. 5(b)(2)(B), I mailed a true and correct copy of the foregoing AMENDED PUBLIC RECORDS ACT APPLICATION PURSUANT TO NEV. REV. STAT. § 239.001/ PETITION FOR WRIT OF MANDAMUS - EXPEDITED MATTER PURSUANT TO NEV. REV. STAT. § 239.011 by depositing the same in the United States mail, first-class postage pre-paid, to the following:

Joel E. Tasca and Justin A. Shiroff
BALLARD SPAHR LLP
100 North City Parkway, Suite 1750
Las Vegas, Nevada 89106-4617
Email: tasca@ballardspahr.com; shiroffj@ballardspahr.com
Attorneys for American Broadcasting Companies, Inc., The Associated Press, Cable News Network, Inc., Chesapeake Media I, LLC, d/b/a KSNV-TV, Los Angeles Times Communications, LLC, The New York Times Company, and WP Company LLC d/b/a The Washington Post

Craig R. Anderson, Nick D. Crosby, and Jackie V. Nichols
MARQUIS AURBACH COFFING
10001 Park Run Drive
Las Vegas, NV 89145
Email: canderson@maclaw.com; ncrosby@maclaw.com; jnichols@maclaw.com
Attorneys for Las Vegas Metropolitan Police Department

FURTHER I hereby certify that on this 6th day of December, 2017, pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing

1 AMENDED PUBLIC RECORDS ACT APPLICATION PURSUANT TO NEV. REV.
2 STAT. § 239.001/ PETITION FOR WRIT OF MANDAMUS - EXPEDITED MATTER
3 PURSUANT TO NEV. REV. STAT. § 239.011 in *Las Vegas Review-Journal. v. Las Vegas*
4 *Metropolitan Police Department*, Clark County District Court Case No. A-17-764169-W, to
5 be served electronically using the Odyssey File & Serve electronic filing service system, to
6 all parties with an email address on record.

7 I hereby further certify that on the 6th day of December, 2017, pursuant to Nev. R.
8 Civ. P. 5(b)(2)(B), I mailed a true and correct copy of the foregoing AMENDED PUBLIC
9 RECORDS ACT APPLICATION PURSUANT TO NEV. REV. STAT. § 239.001/
10 PETITION FOR WRIT OF MANDAMUS - EXPEDITED MATTER PURSUANT TO
11 NEV. REV. STAT. § 239.011 by depositing the same in the United States mail, first-class
12 postage pre-paid, to the following:

13 Craig R. Anderson, Nick D. Crosby, and Jackie V. Nichols
14 MARQUIS AURBACH COFFING
15 10001 Park Run Drive
16 Las Vegas, NV 89145
17 Email: canderson@maclaw.com; ncrosby@maclaw.com; jnichols@maclaw.com
18 *Attorneys for Las Vegas Metropolitan Police Department*

19 
20 An Employee of MCLETCHIE SHELL LLC
21
22
23
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25
26
27
28

EXHIBIT 1



From: Anita Hassan <ahassan@reviewjournal.com>
Date: Mon, Oct 2, 2017 at 9:30 AM
Subject: Redo on first records request- Las Vegas Review Journal
To: PIO@lvmpd.com

Good morning,

I am resubmitting my first request with a slight language adjustment.

Thank you,
Anita Hassan

--

Anita Hassan
Las Vegas Review Journal
1111 West Bonanza Road
Las Vegas, NV 89106

Oct. 2, 2017

Las Vegas Metro Police Department
400 S. Martin L. King Boulevard
Las Vegas, Nevada 89106

Dear Custodian of Records:

Under the Nevada Open Records Act § 239 et seq., I am requesting an opportunity to inspect or obtain copies of public records

-A log and/or call slips of any and all emergency calls received made on Sunday October 1 between 8 p.m. and 2 a.m. regarding calls for service between the 3800 and 4000 blocks of South Las Vegas Blvd, including but not limited to time stamps, origin/location and address of the originating call, reason for the call, police patrol units dispatched including the patrol unit numbers, patrol unit substation and time of dispatch and time of arrival.

-A log and/or call slips of any and all emergency calls received on Sunday October 1 between 8 p.m. and 2 a.m. regarding calls for service between the 3800 and 4000 blocks of South Las Vegas Blvd, including but not limited to time stamps, origin/location and address of the originating call, reason for the call, fire and ambulance units dispatched including, unit numbers and time of dispatch and time of arrival.

Please release each segregable item in this request as soon as it become available. If access to the records I am requesting will take longer than a 'reasonable' amount of time, please contact me with information about when I might expect copies or the ability to inspect the requested records.

If there are any fees for searching or copying these records, please inform me if the cost will exceed \$50. However, as I am a reporter for the Las Vegas Review Journal, I would also like to request a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding. This information is not being sought for commercial purposes.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

Thank you for considering my request.

Anita Hassan

Investigative Reporter

Las Vegas Review Journal

Office: 702-383-4643

Cell: 713-922-7617

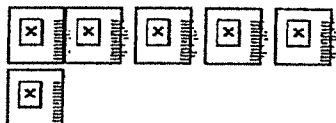
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Anita Hassan

Investigative Reporter

1111 W. Bonanza Road, Las Vegas, Nevada 89106

P. 702.383.4643 C.713.922.7617



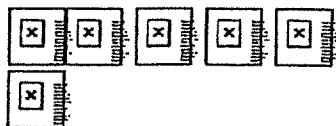
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Anita Hassan

Investigative Reporter

1111 W. Bonanza Road, Las Vegas, Nevada 89106

P. 702.383.4643 C.713.922.7617



Good morning,

I know you're officers are currently very busy working the shooting. The department and those injured in the incident are in my thoughts.

Below is a public information request I am submitting. Please let me know if there are any redactions you may need to make to the request or if I need to resubmit this request with any changes to wording to make the request that would aide in the records request process.

Thank you,
Anita Hassan

Anita Hassan
Las Vegas Review Journal
1111 West Bonanza Road
Las Vegas, NV 89106

Oct. 2, 2017

Las Vegas Metro Police Department
400 S. Martin L. King Boulevard
Las Vegas, Nevada 89106

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-A log and/or call slips of any and all emergency calls received on Sunday October 1 between 8 p.m. and 2 a.m. regarding calls for service between the 3800 and 4000 blocks of South Las Vegas Blvd, including but not limited to time stamps, origin/location and address of the originating call, reason for the call, fire and ambulance units dispatched including, unit numbers and time of dispatch and time of arrival.

Please release each segregable item in this request as soon as it become available. If access to the records I am requesting will take longer than a 'reasonable' amount of time, please contact me with information about when I might expect copies or the ability to inspect the requested records.

If there are any fees for searching or copying these records, please inform me if the cost will exceed \$50. However, as I am a reporter for the Las Vegas Review Journal, I would also like to request a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding. This information is not being sought for commercial purposes.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

Thank you for considering my request.

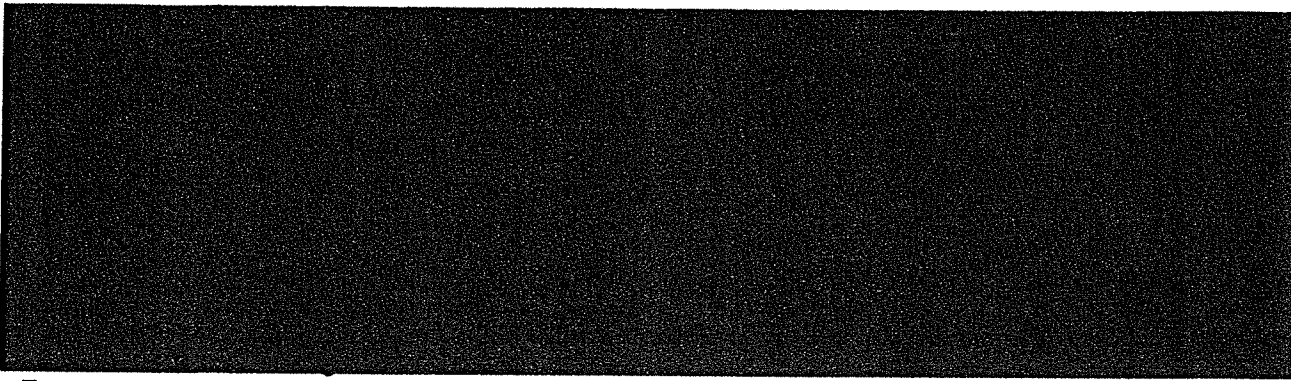
Anita Hassan
Investigative Reporter

Las Vegas Review Journal

Office: 702-383-4643

Cell: 713-922-7617

EXHIBIT 2



From: Anita Hassan <ahassan@reviewjournal.com>
Date: Mon, Oct 2, 2017 at 9:12 AM
Subject: Records Request 2- Las Vegas Review Journal
To: PIO@lvmpd.com

Good morning,

I know you're officers are currently very busy working the shooting. The department and those injured in the incident are in my thoughts.

Below is a public information request I am submitting. Please let me know if there are any redactions you may need to make to the request or if I need to resubmit this request with any changes to wording to make the request that would aide in the records request process.

Thank you,
Anita Hassan

Anita Hassan
Las Vegas Review Journal
1111 West Bonanza Road
Las Vegas, NV 89106

Oct. 2, 2017

Las Vegas Metro Police Department
400 S. Martin L. King Boulevard
Las Vegas, Nevada 89106

Dear Custodian of Records:

Under the Nevada Open Records Act § 239 et seq., I am requesting an opportunity to inspect or obtain copies of public records

-Any and all recordings of 911 calls received on Sunday October 1 between 8 p.m. and 2 a.m. regarding calls for service between 3800 and 4000 blocks of South Las Vegas Boulevard. Additionally, please submit any paper records for these calls.

Please release each segregable item in this request as soon as it become available. If access to the records I am requesting will take longer than a 'reasonable' amount of time, please contact me with information about when I might expect copies or the ability to inspect the requested records.

If there are any fees for searching or copying these records, please inform me if the cost will exceed \$50. However, as I am a reporter for the Las Vegas Review Journal, I would also like to request a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding. This information is not being sought for commercial purposes.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

Thank you for considering my request.

Anita Hassan

Investigative Reporter

Las Vegas Review Journal

Office: 702-383-4643

Cell: 713-922-7617

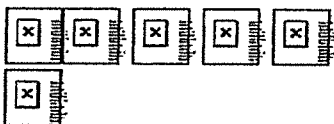
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Anita Hassan

Investigative Reporter

1111 W. Bonanza Road, Las Vegas, Nevada 89106

P. 702.383.4643 C. 713.922.7617



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Anita Hassan

Investigative Reporter

1111 W. Bonanza Road, Las Vegas, Nevada 89106

P. 702.383.4643 C. 713.922.7617

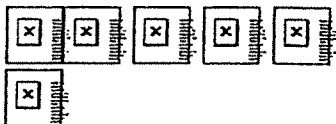
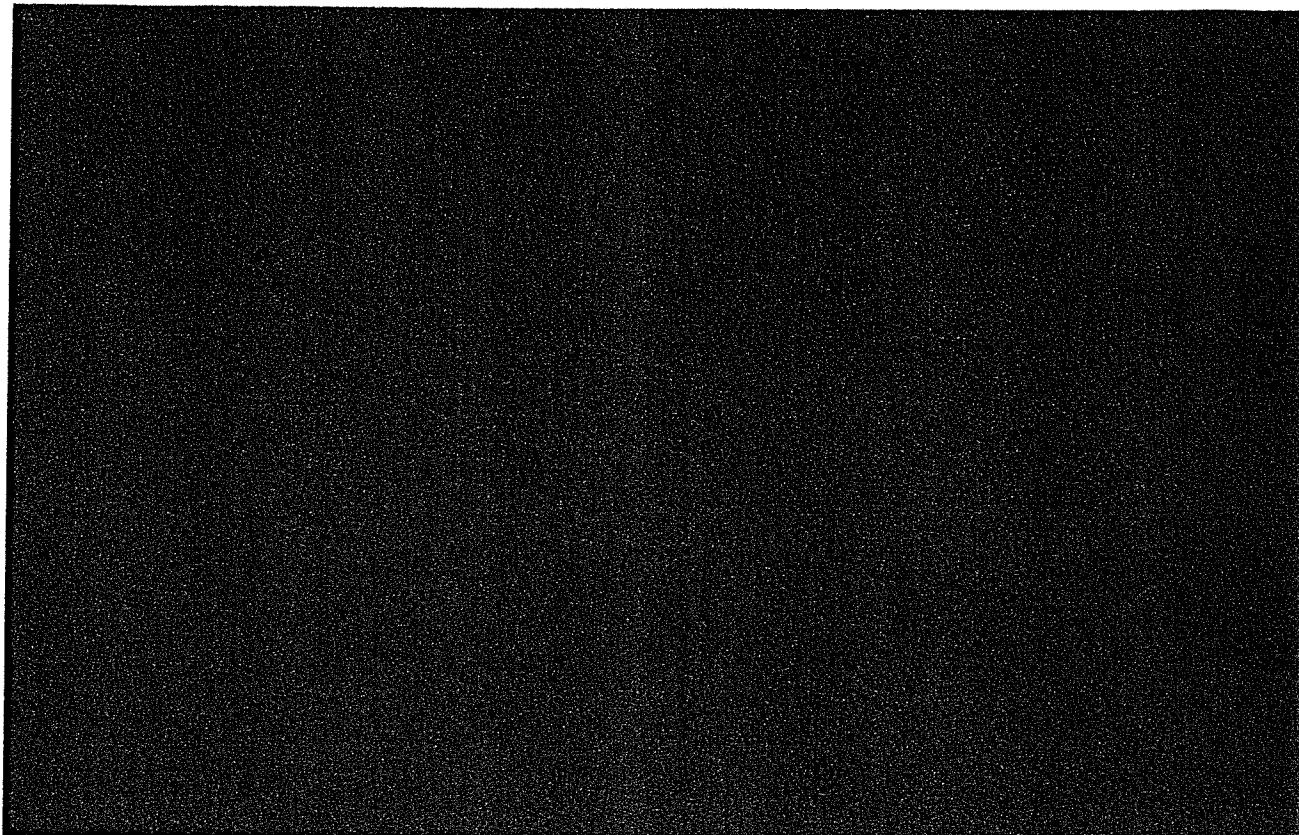


EXHIBIT 3



From: Rachel Crosby <rcrosby@reviewjournal.com>
Date: Mon, Oct 2, 2017 at 2:05 PM
Subject: 911 calls from shooting
To: PIO <pio@lvmpd.com>

I realize a lot is going on, but I am requesting any and all 911 calls from the incident.

Wondering if LVMPD has a plan to release them, or if there is any paperwork I need to fill out.

Thank you,
Rachel

--
Rachel Crosby
State courts reporter
702-380-8135: [@rachelacrosby](https://twitter.com/rachelacrosby)

LAS VEGAS
REVIEW-JOURNAL   



EXHIBIT 4



From: Arthur Kane <akane@reviewjournal.com>

Date: Mon, Oct 9, 2017 at 4:49 PM

Subject: RECORDS request update

To: PIO <PIO@lvmpd.com>

Cc: Karisa King <kking@reviewjournal.com>, Anita Hassan <ahassan@reviewjournal.com>

I am checking to see where our request is for dispatch logs, 911 calls and other information filed Monday Oct. 2, 2017 by my colleague Anita Hassan. Can you let me know where we are in the process of getting those documents as it's been more than five days.

thanks,

--

Thanks.

Arthur Kane
Investigative Reporter
Las Vegas Review-Journal
702-383-0286
@arthurm Kane

--

Anita Hassan
Investigative Reporter
1111 W. Bonanza Road, Las Vegas, Nevada 89106
P. 702.383.4643 C.713.922.7617

**LAS VEGAS
REVIEW-JOURNAL**    

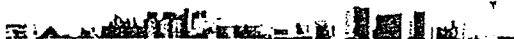
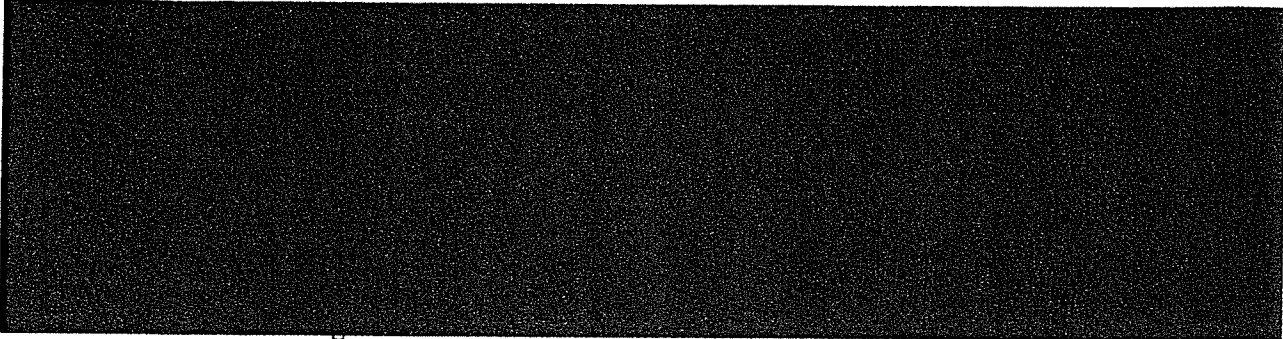


EXHIBIT 5



From: PIO <PIO@lvmpd.com>

Date: Wed, Oct 18, 2017 at 4:10 PM

Subject: RE: RECORDS request update

To: Arthur Kane <akane@reviewjournal.com>

Cc: Karisa King <kking@reviewjournal.com>, Anita Hassan <ahassan@reviewjournal.com>

Mr. Kane,

Please be advised that records relating to LVMPD Event No. 171001-3519 are part of an open investigation. At this time any records responsive to your request is confidential and privileged pending the outcome of the investigation. See, Donrey v. Bradshaw, 106 Nev. 360, 798 P2d 144 (1990).

Until the case is closed, the investigatory information you have requested cannot be provided.

Office of Public Information

Las Vegas Metropolitan Police Department

400-B South Martin L. King Boulevard, Las Vegas, Nevada 89106

☎ 702.828.4082 office | 📠 702.828.1550 fax

Follow us on Facebook, Twitter and Instagram

AO

From: Arthur Kane [mailto:akane@reviewjournal.com]

Sent: Monday, October 9, 2017 4:50 PM

To: PIO <PIO@LVMPD.COM>

Cc: Karisa King <kking@reviewjournal.com>; Anita Hassan <ahassan@reviewjournal.com>
Subject: RECORDS request update

I am checking to see where our request is for dispatch logs, 911 calls and other information filed Monday Oct. 2, 2017 by my colleague Anita Hassan. Can you let me know where we are in the process of getting those documents as it's been more than five days.

thanks,

--

Thanks,

Arthur Kane

Investigative Reporter

Las Vegas Review-Journal

702-383-0286

@arthurm Kane

--

Anita Hassan

Investigative Reporter

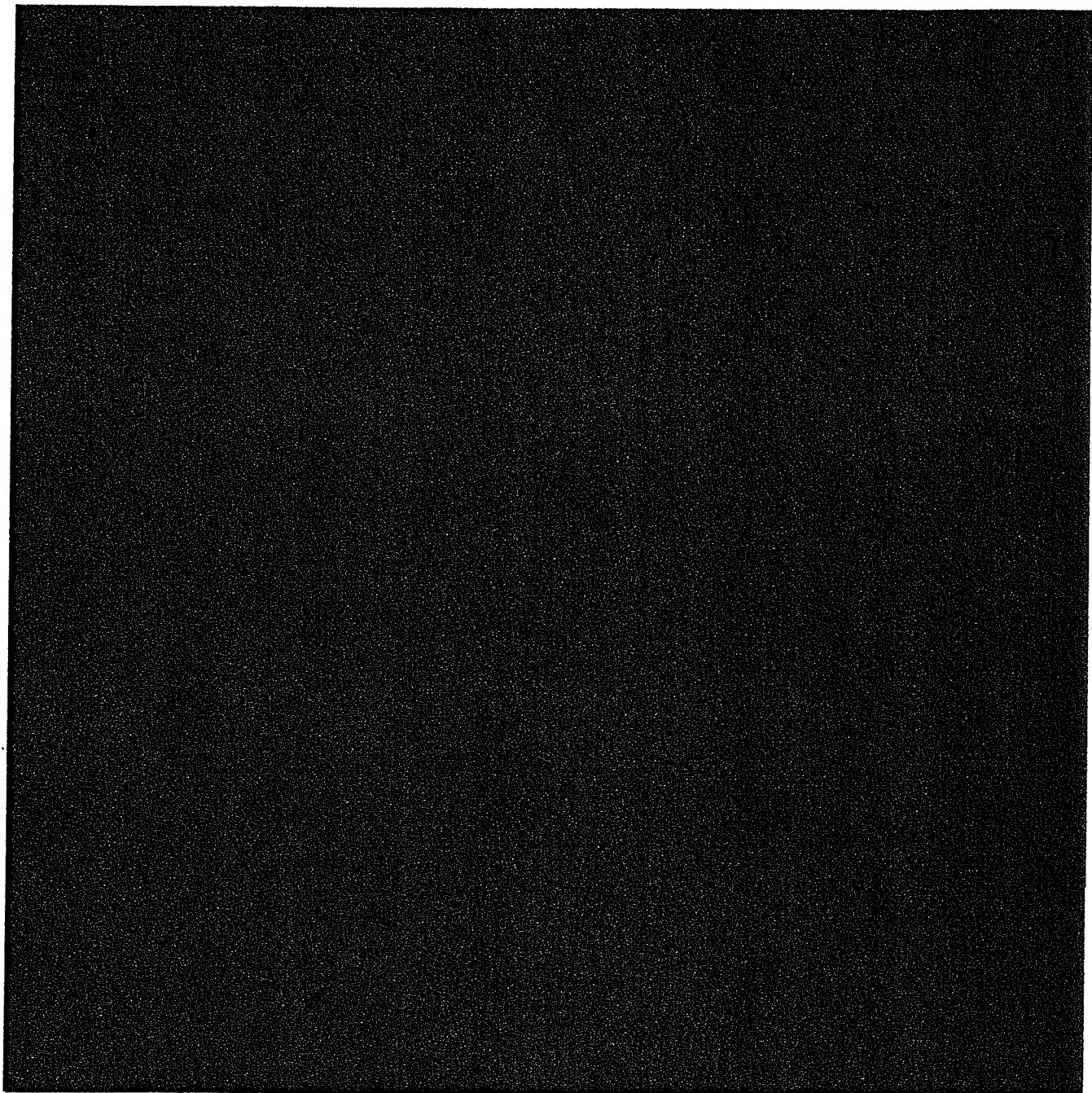
1111 W. Bonanza Road, Las Vegas, Nevada 89106

P. 702.383.4643 C. 713.922.7617

**LAS VEGAS
REVIEW-JOURNAL**



EXHIBIT 6



From: Rio Lacanlale <rlacanlale@reviewjournal.com>

Date: Sun, Oct 15, 2017 at 10:15 AM

Subject: C/o Fiscal Affairs Committee

To: PIO <PIO@lvmpd.com>

Cc: Carri Geer <cgeer@reviewjournal.com>, Michael Shoro <mshoro@reviewjournal.com>, Blake Apgar <bapgar@reviewjournal.com>, Max Michor <mmichor@reviewjournal.com>

Hello,

Pursuant to the Nevada Public Records Act

I am
kindly
requesting copies of the following:

- Purchase orders for any emergency purchases on or after Oct. 1, 2017
- Copies of any emergency, no-bid contracts entered on or after Oct. 1, 2017.

I will call the PIO Monday morning to follow up on this request. Thank you.

--

Warm regards,

Rio Lacanlale

Crime & Breaking News Reporter

1111 W. Bonanza Road

Las Vegas, NV 89106

O. 702.383.0381 C. 702.739.4968

@riolacanalale



--

Warm regards,

Rio Lacanlale

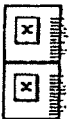
Crime Reporter

1111 W. Bonanza Road

Las Vegas, NV 89106

O. 702.383.0381 C. 702.739.4968

@riolacanalale



--

Carri Geer Thevenot

Metro Editor

1111 W. Bonanza Road, Las Vegas, Nevada 89106

P. 702.383.0361 C. 702.217.9343

@CarriGeer .

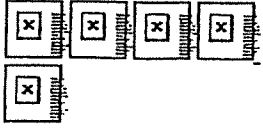


EXHIBIT 7

11/30/2017

Las Vegas Review-Journal, Inc Mail - Las Vegas Review-Journal, ref. records request

**LAS VEGAS
REVIEW-JOURNAL**

Rachel Crosby <rcrosby@reviewjournal.com>

Las Vegas Review-Journal, ref. records request

Rachel Crosby <rcrosby@reviewjournal.com>

Thu, Nov 30, 2017 at 2:16 PM

To: Joseph Lombardo SHERIFF <j3602L@lvmpd.com>

Hi there Sheriff Lombardo,

Rachel Crosby here with the Las Vegas Review-Journal. I am reaching out to let you know I filed a formal records request regarding gunman Stephen Paddock's weapons.

Since we discussed this request during a phone conversation last week, I found it appropriate to let you know I formally filed it. Attached is a copy.

Please let me know if there are any updates regarding the Oct. 1 mass shooting investigation. I know you mentioned you might have more information sometime next week. You can reach me here, at my desk (702-477-3801) or my cell (702-501-4382).

Thanks,
Rachel

--

Rachel Crosby

Reporter

702-477-3801; @rachelacrosby

**LAS VEGAS
REVIEW-JOURNAL**   



 **LVRJ-FOIA-mass shooting-weapons.pdf**
63K

Rachel Crosby, Las Vegas Review-Journal
1111 W. Bonanza Rd.
Las Vegas, NV, 89106

Nov. 30, 2017

Custodian of Records
Las Vegas Metropolitan Police Headquarters
400 South Martin Luther King Boulevard
Las Vegas, NV, 89106

To the custodian of Metropolitan Police Department records,

Under the **Nevada Open Records Act § 239 et seq.**, I am requesting an opportunity to inspect or obtain copies of any and all documents that reflect any weapons obtained through the course of the Oct. 1, 2017 Las Vegas mass shooting investigation that are suspected to have belonged to mass shooter Stephen Paddock. This request includes but is not limited to any returns on search warrants and any documents reflecting any other weapons obtained through the course of the investigation, either in Paddock's various properties — including but not limited to his car, his Reno home and his Mesquite homes — and any other places or properties he stayed at or had connections to, including but not limited to his Mandalay Bay corner suite.

These records are matters of public importance and of concern to public safety, as they will contribute significantly to the public's understanding of the events that took place Oct. 1, 2017. I am a reporter for the Las Vegas Review-Journal, and this information is not being sought for commercial purposes.

If access to the records I am requesting will take longer than a 'reasonable' amount of time, please contact me with information about when I might expect copies or the ability to inspect the requested records.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law. Thank you for considering my request.

Sincerely,

Rachel Crosby
702-477-3801

EXHIBIT 8

November 30, 2017

Rachel Crosby

Re: 1 October (Mass Shooting Event)

Dear Ms. Crosby:

This letter is in response to your November 30, 2017 wherein you are requesting records pertaining to an investigation involving the above-referenced event.

The specific records referenced above are the subject of an ongoing criminal investigation/criminal case, and cannot be released without jeopardizing that investigation/case. Accordingly, the requested records cannot be released at this time. The denial of your request for records is based on the following laws and privileges:

- (1) The requested record is not a public record under NRS 239.010(1), as such records are declared by law to be confidential. *See Pub. Employees Ret. Sys. v. Reno Newspapers*, 129 Nev. Adv. Op. 88, 313 P.3d 221, 224-25 (2013) (explaining that "statutes, rules, or case law may independently declare individuals' information confidential, privileged, or otherwise protected."); *Civil Rights for Seniors v. Admin-Office of the Courts*, 129 Nev. Adv. Op. 80, 313 P.3d 216, 219-20 (2013) (explaining that the Public Records Law does not require the disclosure of materials that "are confidential as a matter of law").
- (2) The law enforcement privilege, protecting open criminal investigations, investigative techniques, witnesses and law enforcement personnel, and general interference with an investigation applies. *See Sanchez v. City of Santa Ana*, 936 F.2d 1027, 1033 (9th Cir. 1991); *In re Department of Investigation of City of New York*, 856 F.2d 481, 483-84 (2d Cir. 1988); *Morrissey v. City of New York*, 171 F.R.D. 85, 90 (S.D.N.Y. 1997); *See also 5 U.S.C. section 552(b)(7)* (Nevada Supreme Court cites to the FOIA exemptions as analogous authority for the Nevada Public Records Act. *DR Partners v. Board of County Comm'rs*, 116 Nev. 616, 622, 6 P.3d 465, 469 (2000); *Donrey of Nevada v. Bradshaw*, 106 Nev. 630, 636, 798 P.2d 144, 148, (1990))

The requested documents are also protected from disclosure because, under the balancing test required, the law enforcement policy justifications for nondisclosure here clearly outweigh the public's interest in access to the documents. *See Donrey of Nevada v. Bradshaw*, 106 Nev. 630, 636, 798 P.2d 144, 148, 1990 (acknowledging that law enforcement policy justifications for nondisclosure such as pending criminal investigations, confidential investigative techniques, potential jeopardy to law enforcement personnel, and a defendant's right to a fair trial may outweigh the general policy in favor of open government). Not only is the criminal investigation ongoing, it is

- (1) likely to continue for a considerable time as it is clearly the single largest scale investigation LVMPD has ever led. The complications involved in investigating such a horrendous event cannot be understated. The magnitude of the response by LVMPD forces is unprecedented as is the collection of evidence. Evidence has been collected from many locations, the most intense evidence collection being the site of the shooting where 22,000 people were gathered at the time of the shooting. The concert site alone took more than a week to process.

Please also be advised that the Las Vegas Metropolitan Police Department is the law enforcement agency leading the above investigation, however, numerous other law enforcement agencies have assisted or are assisting, including the FBI, which may be in possession of records relating to your request.

Sincerely,

JOSEPH LOMBARDO, SHERIFF

By: Larry Hadfield
Officer Larry Hadfield
Office of Public Information

EXHIBIT 9

11/30/2017

Las Vegas Review-Journal, Inc Mail - Las Vegas Review-Journal, ref. records request

**LAS VEGAS
REVIEW-JOURNAL**

Rachel Crosby <rcrosby@reviewjournal.com>

Las Vegas Review-Journal, ref. records request

Jeffrey Clark Sgt <J8749C@lvmpd.com>

Thu, Nov 30, 2017 at 3:25 PM

To: "rcrosby@reviewjournal.com" <rcrosby@reviewjournal.com>

Rachel,

We received the below request you sent directly to Sheriff Lombardo. Please refer your request to the FBI.

Thank you,

Jeff

Jeff Clark

Sergeant

Office of Public Information

Las Vegas Metropolitan Police Department

From: Rachel Crosby <rcrosby@reviewjournal.com>

Date: 11/30/17 2:16 PM (GMT-08:00)

To: Joseph Lombardo SHERIFF <J3602L@LVMPD.COM>

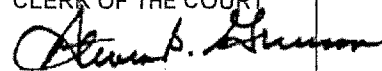
Subject: Las Vegas Review-Journal, ref. records request

[Quoted text hidden]



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63K

2

**Marquis Aurbach Coffing**

Craig R. Anderson, Esq.

Nevada Bar No. 6882

Nick D. Crosby, Esq.

Nevada Bar No. 8996

Jackie V. Nichols, Esq.

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Facsimile: (702) 382-5816

canderson@maclaw.com

ncrosby@maclaw.com

jnichols@maclaw.com

Attorneys for Respondent Las Vegas

Metropolitan Police Department

DISTRICT COURT**CLARK COUNTY, NEVADA**

American Broadcasting Companies, Inc.; The
Associated Press; Cable News Network, Inc.;
Chesapeake Media I, LLC, d/b/a KSNV-TV; Los
Angeles Times Communications, LLC; The New
York Times Company; and WP Company LLC
d/b/a The Washington Post,

Case No.: A-17-764030-W

A-17-764169-W

Dept. No.: 2

Petitioners,

vs.

Las Vegas Metropolitan Police Department,

Respondent.

NOTICE OF ENTRY OF ORDER

TO: ALL INTERESTED PARTIES; AND THEIR ATTORNEYS OF RECORD:

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1 PLEASE TAKE NOTICE that an Order Granting Amended Public Records Act
2 Applications Pursuant to Nev. Rev. Stat. § 239.011/Petition for Writ of Mandamus was entered
3 on the 2nd day of March, 2018, a copy of which is attached hereto.

4 Dated this 2nd day of March, 2018.

5
6 MARQUIS AURBACH COFFING

7
8 By: /s/ Jackie V. Nichols
9 Craig R. Anderson, Esq.
10 Nevada Bar No. 6882
11 Nick D. Crosby, Esq.
12 Nevada Bar No. 8996
13 Jackie V. Nichols, Esq.
14 Nevada Bar No. 14246
15 10001 Park Run Drive
16 Las Vegas, Nevada 89145
17 Attorneys for Respondent Las Vegas
18 Metropolitan Police Department
19
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF ENTRY OF ORDER** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 2nd day of March, 2018. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

Joel E. Tasca, Esq.
Justin A. Shiroff, Esq.
Ballard Spahr LLP
1980 Festival Plaza Drive, Suite 900
Las Vegas, Nevada 89135
LVCTIntake@ballardspahr.com
shrioffj@ballardspahr.com
tasca@ballardspahr.com
lvdocket@ballardspahr.com
Attorneys for Petitioners

Margaret A. McLetchie, Esq.
Alina M. Shell, Esq.
McLetchie Shell LLC
701 East Bridger Avenue, Suite 520
Las Vegas, Nevada 89101
maggie@nvlitigation.com
alina@nvlitigation.com
Attorneys for Petitioner Las Vegas Review-
Journal

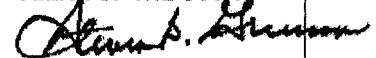
I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

N/A



An employee of Marquis Aurbach Coffing

¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

**Marquis Aurbach Coffing**

Craig R. Anderson, Esq.

Nevada Bar No. 6882

Nick D. Crosby, Esq.

Nevada Bar No. 8996

Jackie V. Nichols, Esq.

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ncrosby@maclaw.com

jnichols@maclaw.com

Attorneys for Respondent Las Vegas

Metropolitan Police Department

DISTRICT COURT**CLARK COUNTY, NEVADA**

American Broadcasting Companies, Inc.; The
Associated Press; Cable News Network, Inc.;
Chesapeake Media I, LLC, d/b/a KSNV-TV; Los
Angeles Times Communications, LLC; The New
York Times Company; and WP Company LLC
d/b/a The Washington Post,

Case No.: A-17-764030-W

A-17-764169-W

Dept. No.: 2

Petitioners,

vs.

Las Vegas Metropolitan Police Department,

Respondent.

**ORDER GRANTING AMENDED PUBLIC RECORDS ACT APPLICATIONS
PURSUANT TO NEV. REV. STAT. § 239.011/PETITION FOR WRIT OF MANDAMUS**

This matter came before the Court on Petitioners American Broadcasting Companies, Inc. ("ABC"), the Associated Press ("AP"), Cable News Network, Inc. ("CNN"), Chesapeake Media I, LLC, d/b/a KSNV-TV ("KSNV-TV"), Los Angeles Times Communications, LLC ("Los Angeles Times"), The New York Times Company ("The New York Times"), Scripps Broadcasting Holdings, LLC d/b/a KTNV-TV ("KTNV-TV") and WP Company LLC d/b/a The Washington Post's ("Washington Post") (collectively the "Coalition") Amended Public Records Act Application Pursuant to Nev. Rev. Stat. § 239.011/ Petition for Writ of Mandamus; and Petitioner Las Vegas Review-Journal's ("Review-Journal", and collectively with the Coalition,

1 “Petitioners”) Amended Public Records Act Application Pursuant to Nev. Rev. Stat. 239.011/
2 Petition for Writ of Mandamus (collectively, the “Petitions”).

3 The Review-Journal filed its Opening Brief in Support of Amended Public Records Act
4 Application Pursuant to Nev. Rev. Stat. § 239.001/Petition for Writ of Mandamus on December
5 8, 2017. The Coalition filed its Substantive Joinder thereto on December 15, 2017. Metro filed
6 its Opposition to Petitioner Las Vegas Review Journal’s Public Records Act Application
7 Pursuant to Nev. Rev. Stat. § 239.001/Petition for Writ of Mandamus on January 8, 2018. Metro
8 filed its Opposition to the Coalition’s Petition on January 16, 2018. The Review-Journal filed its
9 Reply on January 22, 2018. Finally, the Coalition filed its Reply on January 31, 2018.

10 At the February 7, 2018 hearing on the Petitions, Joel E. Tasca, Esq., of the law firm
11 Ballard Spahr LLP appeared on behalf of the Coalition; Maggie McLetchie, Esq., of the law firm
12 McLetchie Shell LLC, appeared on behalf of the Review-Journal; and Nick D. Crosby, Esq. and
13 Jacqueline Nichols, Esq., of the law firm Marquis Aurbach Coffing, appeared on behalf of the
14 Las Vegas Metropolitan Police Department (“Metro”). Based on the Court’s careful review of
15 the parties’ briefs, oral argument by counsel and the pleadings and papers on file, for the reasons
16 stated by the Court and reflected in the record, and for good cause shown, the Court rules as
17 follows:

- 18 1. The Nevada Public Records Act (the “Act”) is codified at Nev. Rev. Stat. § 239.
- 19 2. The Act provides that public records must be made available to the public for
20 inspection or copying.
- 21 3. The purpose of the Act is to foster democratic principles by providing members of
22 the public with access to inspect and copy public records to the extent permitted under Nevada
23 law.
- 24 4. The Act, as well as the First Amendment to the Constitution, provides the press
25 with the ability to obtain and publish information about issues that affect the public interest and
26 information about the conduct of government officials. They further provide the press with the
27 tools to ensure that the government is responsible and efficient.

28

1 5. Furthermore, they provide the press with the tools that assist the public in holding
2 its government accountable.

3 6. Government records are presumed to be public records. Any restriction to the
4 public's right of access to public records must be narrowly applied.

5 7. Metro bears a heavy burden in preventing disclosure of public records pursuant to
6 the Act.

7 8. Metro must satisfy a two-pronged test to justify non-disclosure. Metro must first
8 establish, by a preponderance of the evidence, that the public records sought are confidential.
9 Metro must then prove, by a preponderance of the evidence, that its interest in non-disclosure
10 outweighs the public's interest in access.

11 9. The Act establishes a presumption in favor of public access.

12 10. The Court recognizes that governmental entities are generally required to provide
13 citations to legal authority supporting non-disclosure within five (5) business days pursuant to
14 Nev. Rev. Stat. § 239.0107(d). However, as to the Petitioners' argument that Metro waived the
15 right to withhold public records in this case by failing to timely respond, the Court rejects this
16 argument.

17 11. The Court finds that there was no implied, express, or statutory waiver due to
18 Metro's pre-petition conduct, particularly with respect to the extraordinary circumstances
19 surrounding the October 1 Massacre.

20 12. The Court finds that Metro had a duty to redact confidential information and
21 produce the non-confidential portions of the public records, if it contended that the requested
22 public records were confidential or otherwise protected from disclosure. Wholesale withholding
23 of public records with the general claim of confidentiality suggests to this Court that the records
24 have not been sufficiently scrutinized.

25 13. The Court finds that asserting a blanket protection over all categories of public
26 records is improper.

27 14. Metro had a duty to prove, by a preponderance of the evidence, that each public
28 record (or part thereof) is confidential. The Court finds that Metro failed to meet this burden.

1 15. The Court finds that there exists no rule that records can be withheld merely
2 because they relate to an ongoing investigation. Metro still has the duty to show that the public
3 records of the ongoing investigation are confidential.

4 16. In light of Metro's preliminary report concerning the October 1 Massacre, the
5 entire universe of investigative records cannot be so sensitive as to warrant wholesale
6 withholding.

7 17. Additionally, Sheriff Lombardo publicly stated that it is Metro's responsibility to
8 ensure timely disclosure of public records in this case.

9 18. Metro, however, failed to specifically explain how the public record production
10 would impede the investigation.

11 19. To the extent that the disclosure might have some detrimental impact on the
12 investigation, that impact is outweighed by the public interest. The public has the right to know
13 the manner in which its government officials are carrying out their public safety responsibilities.

14 20. The Court finds that any personal privacy concerns implicated by the public
15 records disclosure can be remedied by redactions, including individual names (other than
16 government officials), addresses, phone numbers, social security numbers, descriptions of
17 individuals, and social media data for all individuals.

18 21. The Court also rejects Metro's contention – that the horrifying 911 calls may be
19 traumatic to close family members who hear the voices of their loved ones – as too speculative to
20 weigh against disclosure.

21 22. In the rare and limited circumstances that any such concern may arise, Metro may
22 prepare a privilege log for future review and consideration by this Court.

23 23. The Court denies Metro's request for an in camera review. The Court finds that
24 the time has passed for Metro to assert any valid objection to production.

25 24. The Court finds that Metro has engaged in wholesale withholding of public
26 records with insufficiently specific reasons to do so.

27 25. The Court concludes that Metro failed to prove by a preponderance of the
28 evidence that any of the requested public records are confidential.

1 26. The Court further concludes that the strong public interest in favor of disclosure,
2 together with the strong presumption in favor of production, outweighs any governmental
3 interest in withholding the public records.

4 27. The Court finds that the public records sought include: 911 calls, body camera
5 data, as well as dash cams, CCTV videos, evidence logs, dispatch information, interview reports,
6 search warrant returns, affidavits of probable cause, purchase orders and no-bid contracts, and
7 information on any weapons obtained during the investigation into the October 1 Massacre.

8 Accordingly, and in light of the Court's findings in this case, the Court orders as follows:

9 IT IS HEREBY ORDERED that the Petitions are GRANTED in their entirety;

10 IT IS HEREBY FURTHER ORDERED that Metro shall immediately begin producing
11 public records responsive to the public records request at issue in the Petitions;

12 IT IS HEREBY FURTHER ORDERED that Metro shall produce the public records on a
13 rolling basis, as public records are appropriately redacted and available for disclosure, without
14 unnecessary delay;

15 IT IS HEREBY FURTHER ORDERED that Metro shall exercise the utmost good faith
16 in producing the public records on a timely basis;

17 IT IS HEREBY FURTHER ORDERED that, if Metro comes across any individual public
18 record that may be highly confidential or where redactions may not be practicable, Metro shall
19 meet and confer with Petitioners in an attempt to resolve the issue. The Court cautions that this
20 right to potentially seek a protective order is to be used very sparingly;

21 IT IS HEREBY FURTHER ORDERED that any protective order Metro may seek is not
22 to be used to withhold entire groups of public records;

23 IT IS HEREBY FURTHER ORDERED that the filing of any subsequent motion for a
24 protective order shall not cause any delay in the production of all other requested public records;

25 IT IS HEREBY FURTHER ORDERED that the Court will hold a Status Conference in
26 30 days to review a report, to be given by the Parties, covering what has and has not been
27 produced pursuant to this Order. The Status Conference shall be held on March 7, 2018 at 9:00
28 a.m.;

1 IT IS HEREBY FURTHER ORDERED that at the Status Conference, the Parties shall
2 have an opportunity to explain whether there has been good faith communication regarding the
3 production;

4 IT IS HEREBY FURTHER ORDERED that at the Status Conference, the Court shall
5 hear any objections with respect to the delay in disclosure or the need for more time for Metro to
6 produce;

7 IT IS HEREBY FURTHER ORDERED that acceptable redactions shall include
8 individual names (other than government officials), addresses, phone numbers, social security
9 numbers, descriptions of individuals, and social media data for all individuals. To the extent that
10 any public record produced might specifically identify the names of the individuals or the
11 description of the individuals (or any other personal information), that information shall be
12 redacted; and

13 IT IS HEREBY FURTHER ORDERED that Metro shall make any and all public records
14 subject to this proceeding available at Metro's office for review by Petitioners, particularly
15 where production of those public records is either too burdensome or impossible otherwise.

16 IT IS HEREBY FURTHERED ORDERED that the Court is not waiving the payment
17 obligation and Petitioners shall pay the fees associated with the production of the public records
18 in accordance with NRS Chapter 239.

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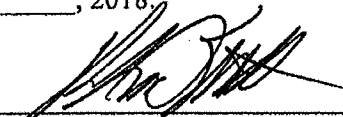
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1 IT IS HEREBY FURTHER ORDERED that the Parties shall submit supplemental
2 briefing regarding the fee amount to be charged with respect to the production of the public
3 records.

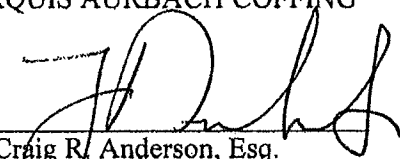
4 IT IS SO ORDERED.

5 DATED this 27th day of February, 2018.

6
7 
8 DISTRICT COURT JUDGE

9 Respectfully Submitted By: 

10 MARQUIS AURBACH COFFING

11
12 By: 

13 Craig R. Anderson, Esq.

14 Nevada Bar No. 6882

15 Nick D. Crosby, Esq.

16 Nevada Bar No. 8996

17 Jackie V. Nichols, Esq.

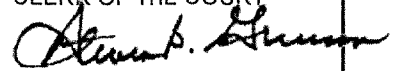
18 Nevada Bar No. 14246

19 10001 Park Run Drive

20 Las Vegas, Nevada 89145

21 Attorneys for Respondent Las Vegas Metropolitan Police Department
22
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3



1 **ORDR**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5
6 **AMERICAN BROADCASTING COMPANIES,**
7 **INC., et al.,**

8 **Plaintiffs,**

9 **vs.**

10 **LAS VEGAS METROPOLITAN POLICE**
11 **DEPARTMENT, et al.,**

12 **Defendants.**

Case No.: A-17-764030-W
Dept. No.: II

Date: March 7, 2018
Time: 9:00 a.m.

**ORDER REGARDING PUBLIC
RECORDS REQUEST**

13 **I. INTRODUCTION**

14 This action involves Petitioners' request for records from the Las Vegas Metropolitan
15 Police Department ("Metro") pursuant to Nevada's Public Records Act. Petitioners include
16 the Las Vegas Review Journal, American Broadcasting Companies, Associated Press, Cable
17 News Network, Inc., New York Times, and other press (hereinafter referred to as the
18 "Media"). This Court already held that Metro must produce several categories of records,
19 including body cam recordings, dash cam recordings, CCTV recordings, 911 calls, dispatch
20 logs, evidence logs, interview reports, and search warrant data.

21 The Court set the hearing conducted on Wednesday, March 7, 2018, to determine the
22 fee that Metro could charge for the gathering and copying of the documents and audio/visual
23 data. Having considered the briefs and arguments of counsel, the Court hereby interprets the
24 Nevada Public Records Act and determines the fees that Metro may charge.

25 As a prelude to the findings that follow, this Court holds Metro and its individual
26 officers in very high esteem; understands the dangerous encounters that Metro officers face
27 every day; and regrets the limited budget that has been given to Metro to not only protect the
28 health, welfare, and safety of the public, but to respond to massive requests for production of

1 documents. Nevertheless, the purview of the responsibility of this Court is only to apply the
2 law as given to the facts at hand, leaving it to others to determine whether the law should be
3 changed.

4 Explained below, with one exception, Metro is not allowed to charge the Media for
5 staff time to get the records ready for copying. Accordingly, the Court DENIES Metro's
6 demand for its range of fees from \$233,750 to \$458,159 to comply with the records request.
7 Metro must reevaluate and report back to this Court with the proper fee that it proposes to
8 charge the Media, consistent with this Order. Despite the need for such further reevaluation,
9 Metro must immediately begin complying with the Media's request.

10 **II. PURPOSE OF THE PUBLIC RECORDS ACT**

11 This Court, in reaching its interpretation of the relevant portions of the Nevada Public
12 Records Act, first searched the Constitutional underpinnings of the Act. The Act does not
13 have any direct basis in either the United States or Nevada Constitutions. As stated by Potter
14 Stewart, former Associate Justice of the United States Supreme Court, the public's right to
15 access public records only indirectly springs from the Constitution:

16 There is no constitutional right to have access to particular
17 government information, or to require openness from the
18 bureaucracy. . . . The public's interest in knowing about its
19 government is protected by the guarantee of a Free Press, but the
20 protection is indirect. The Constitution itself is neither a Freedom
21 of Information Act, nor an Official Secrets Act.

22 Potter Stewart, *Or of the Press*. 26 Hastings LJ 631, 636 (1975).

23 Although there is no direct Constitutional requirement of the government to provide
24 the public with easy access to public records, the public's right to know is essential to our
25 democracy. In the Preamble to Nevada's Public Records Act, the Nevada Legislature
26 declared: "The Legislature hereby finds and declares that: 1. the purpose of this chapter is to
27 foster democratic principles by providing members of the public with access to inspect and
28 copy public books and records to the extent permitted by law; [and that] 2. [t]he provisions of
this chapter must be construed liberally to carry out this important purpose." NRS 239.001.

...

1 The Nevada Supreme Court has held that the purpose of the Nevada Public Records
2 Act is to “ensure the accountability of the government to the public by facilitating public
3 access to vital information about governmental activities.” *DR Partners v. Board of County*
4 *Com'rs. Of Clark County*, 116 Nev, 616, 621 (2000). *See also John Doe Agency v. John Doe*
5 *Corp.*, 493 U.S. 146, 152 (1989) (“The basic purpose of FOIA is to ensure an informed
6 citizenry, vital to the functioning of a democratic society, needed to check against corruption
7 and to hold the governors accountable to the governed.”). Although the Media has not
8 accused Metro of wrongdoing, and neither has the Court in even the slightest manner, there
9 need not be any corruption or unaccountability as a precondition to production of documents.
10 *See National Archives and Records Admin. v. Favish*, 541 U.S. 157, 172 (2004) (“[C]itizens
11 should not be required to explain why they seek the information. A party requesting the
12 information needs no preconceived idea of the uses of data might serve. The information
13 belongs to the citizen to do with as they choose.”).

14 Given the strong public policy in favor of production, the Media must never be
15 compelled to pay an exorbitant fee to obtain records, even if the Media elects not to give any
16 reason for the request. An excessive fee is the antithesis to government accountability.

17 The Public Records Act is undoubtedly a culmination of political thought that the
18 Media best performs its watchdog function when it has ease of access to government records.
19 The government cannot frustrate the Media’s efforts to obtain information on behalf of the
20 public by charging exorbitant fees.

21 **III. THE PARTIES’ DIFFERING VIEWS**

22 The Media contends that Metro cannot charge more than 50 cents per page of
23 documents. The Media also contends that Metro must provide the electronic records (such as
24 the body cam data, 911 calls, and the dispatch logs) for free. In contrast, Metro contends that
25 the Media’s request requires an extraordinary use of personnel and technological resources,
26 thereby entitling Metro to charge its actual cost to compile and copy the requested documents
27 and data. Both sides are wrong.

28 . . .

1 Metro tries to get to Nevada's legislative history to reveal tidbits of words that it might
2 support its position to charge the Media for its staff time to gather the requested documents.
3 To do so, Metro claims the Act is ambiguous. Metro sees an ambiguity because the first part
4 of NRS 239.055 permits Metro to charge an extra 50 cents per page fee if the request requires
5 Metro to use extraordinary services. Metro then sees an inconsistency because the second part
6 of NRS 239.055 restricts Metro to charging no more than its actual costs for the extraordinary
7 use.

8 The various rules of statutory construction do not support Metro's argument.

9 First, this Court must interpret the Act in a manner that avoids an absurd or
10 unreasonable result. *Leven v. Frye*, 123 Nev. 399 (2007). It would be both absurd and
11 unreasonable to think the Legislature in one breath said the government could charge 50 cents
12 per page and then in the very next breath ignore the "50 cent" rule in favor of a much more
13 expansive "actual cost" rule.

14 Second, the Court must examine the context of the Act by "considering the reason or
15 spirit of the law or the causes which induced the legislation to enact it." *Welfare Div. of State*
16 *Dept. of Health, Welfare and Rehabilitation v. Washoe County Welfare Dept.*, 88 Nev. 635,
17 637 (1972). The evident purpose of the legislation in enacting the Public Records Act was to
18 limit fees to insure the public's ease of access to government documents – the people's
19 documents. Metro's interpretation gives an unreasonably expansive "actual cost" entitlement
20 to the government entity in responding to records request. This interpretation is plainly
21 inconsistent with the Legislators' expressed intent in the preamble to the Act. NRS 239.001.

22 Third, "this [C]ourt must give [the Act's] terms their plain meaning, considering its
23 provisions as a whole, so as to read them in a way that would not render words or phrases
24 superfluous or make a provision nugatory." *Arguello v. Sunset Station*, 127 Nev. 365, 370
25 (2011). Metro's interpretation would render the "50 cent" rule nugatory, when a more
26 reasonable interpretation could be found by reading the Act as a whole, giving reasonable
27 meaning to all terms.

28 . . .

1 “When a statute is clear on its face, [the Court] will not look beyond the statute’s plain
2 language.” *Washoe Medical Center v. Second Judicial District Ct.*, 122 Nev. 1298, 1303
3 (2006). Given the clarity of the Act, it is not the role or responsibility of this Court to
4 consider the propriety of the Act as adopted by the Nevada Legislature; it is not the role or
5 responsibility of this Court to insure the Nevada Legislature properly considered and weighed
6 the public policies implicated by the Act; it is not the role or responsibility of this Court to
7 consider the impact the Act might have on the resources of Metro. The Court must presume
8 that the Nevada Legislature already did all of this. All that remains for this Court is to
9 correctly apply the Act as written to the specific facts of this case.

10 Below the Court has grouped the various categories of records based on the various
11 rules that apply to each group.

12 **IV. THE “50 CENT” RULE AS APPLIED TO EVIDENCE LOGS AND** 13 **INTERVIEW REPORTS**

14 By referencing a per “page” fee, the Nevada Legislature clearly expressed its intent
15 that NRC 239.055 applies only to hard copies of documents, and pages of documents that are
16 stored electronically. This provision encompassed the evidence logs and the interview
17 reports.

18 The starting point in determining fees for documents such as evidence logs and
19 interview reports is NRS 239.052. This provision permits Metro to charge its “actual cost”
20 “for providing a copy,” “except as otherwise provided [in other sections of the Act].” Metro
21 and the Media both agree that these words allow the government to bill for the actual cost of
22 making duplicates of the records, and the cost of the medium used (*i.e.* DVD, CD, flash drive,
23 hard drive, etc.). The Court agrees. The Nevada Legislature already showed that it
24 recognized the difference between – on the one hand: the cost of merely duplicating the
25 records and providing them on some form of medium (hereinafter the “COPY COSTS”), and
26 on the other hand: the costs for staff to gather the documents, maintain and update the data
27 system to facilitate the production, consultations necessary to comply with the request, and
28 quality control (hereinafter referenced as the “PRE-COPY PREPARATIONS”).

1 As already stated above, it bears repeating here that NRS 239.055 allows the
2 government to charge an additional amount above and beyond the "COPY COSTS" if the
3 project required the government entity to incur "extraordinary" use of personnel and
4 technological resources. It says: "[T]he government entity may, in addition to any other fee
5 authorized pursuant to this chapter, charge a fee not to exceed 50 cents per page for such
6 extraordinary use." The provision goes on to say that the government cannot bill for more
7 than its actual costs for extraordinary use of staff. In sum, in the event of extraordinary use,
8 Metro can charge for its "COPY COSTS," plus its "PRE-COPY PREPARATIONS," not to
9 exceed 50 cents per page. This part of the Act could not be clearer.

10 The court finds that the Media's request here does indeed require Metro to incur
11 extraordinary use of staff time, thereby implementing the "50 cent" rule for documents.
12 Petitioner has requested a massive amount of documents and information. Petitioner has
13 requested several different categories of documents. Petitioners' request will require several
14 Metro officers, technological personnel, equipment and supervisors. Petitioners' request will
15 require Metro to conduct extensive redactions of confidential and private data. Petitioners'
16 request will require an effort by Metro over a period of at least six (6) months. Finally,
17 Petitioners' request might interfere with Metro's ability to protect the health, welfare, and
18 safety of the public. For all these reasons, the Court finds that the Media's request will
19 involve "extraordinary use," and triggers the 50 cents per page additional allowance.

20 Recognizing that Metro will incur "extraordinary use" of staff and resources, it is easy
21 to calculate the rate that Metro may charge. In its published list of rates, Metro stated that its
22 basic "COPY COSTS" are 31 cents per page.¹ Since the work is extraordinary here, Metro is
23 entitled to charge an extra 50 cents, for a total charge of 81 cents to comply with the Media's
24 obligation to turnover copies of the evidence logs and interview reports.²

25 ¹ At the next hearing, Metro must provide proof that its 31 cents per page charge is equal
26 to or less than its actual costs.

27 ² In giving Metro the full 50 cents, the Court makes the assumption that Metro's
28 extraordinary use of staff would exceed 50 cents when amortized over the total number of
copies to be made.

1 **V. “GEOGRAPHIC INFORMATION SERVICES” RULE AS APPLIED TO**
2 **DISPATCH LOGS**

3 NRS 239.054 carves out one exception which permits Metro to charge the “pre-copy
4 preparations.” This exception applies to data that is part of a “geographic information
5 systems.” A “geographic information system” is “a system of hardware, software and data
6 files on which spatially oriented geographical information is digitally collected, stored,
7 managed, manipulated, analyzed and displayed.” Metro concedes that only the dispatch logs
8 fall into this category.

9 The Nevada Legislature in NRS 239.054 made it clear that the government may
10 charge for the pre-copy preparations (limited to actual costs) plus the actual COPY COSTS,
11 and there is no 50 cent limit.

12 **VI. “FEE FOR PROVIDING” RULE AS APPLIED TO BODY CAM, AND 911**
13 **CALLS**

14 As for the body cam recordings, and 911 calls, these recordings are electronic forms of
15 data not capable of being printed out on a “per page” basis. As previously stated, NRS
16 239.052 permits the government to charge only the COPY COSTS, capped by actual costs.
17 This rule applies to electronic data, and is not subject to the 50 cent cap.

18 There is nothing in the Act that permits Metro to bill the Media for pre-copy
19 preparations. NRS 239.054 applies to geographic information systems – not applicable to
20 body cam data or 911 calls. NRS 239.055 applies to documents – not electronic records that
21 are not susceptible to being printed out on a page by page basis. There is simply nothing in the
22 Act other than NRS 239.052 that applies to body cam recordings or 911 calls. The Nevada
23 Legislature has spoken quite clearly on this issue. The Court cannot go beyond the language
24 and recreate in Metro an entitlement to bill for the staff and other resources needed as part of
25 the pre-copy preparations.

26 Metro sought to bill the Media to compile and produce 748 hours of body cam
27 recordings. Metro argued that it needs to assign personnel to spend from 4675 to 9163 hours
28 to perform initial reviews of the data, to redact confidential and privileged portions of the

1 data, and to perform quality control, all at a rate of \$50 per hour. This translates to a fee of
2 \$233,750 to \$458,159. Nevada law does not permit Metro to charge the Media these amounts
3 to compile the body cam data. Metro is limited to charging the Media only its actual cost to
4 make duplications of the recordings, and the actual cost of the medium to which the
5 recordings are transferred.

6 **VII. SUMMARY OF FEES ALLOWED**

7 In sum, Metro is allowed by law to charge the following fees, but no greater, to
8 properly respond the Media's request pursuant to the public records request:

- 9 **Evidence Logs, and Interview Reports:** COPY COSTS of 31 cents per page, plus an
10 additional 50 cents for extraordinary services, for a total of 81 cents.
- 11 **Body Cams, and 911 Calls:** COPY COSTS – meaning only the actual
12 costs to reproduce the records onto the
13 medium for transfer, and the cost of such
medium (such as DVD, CD, flash drive, hard
drive, etc.).
- 14 **Dispatch Logs:** PRE-COPY PREPARATIONS, meaning
15 actual cost to gather, discuss, supervise and
16 insure quality control, as part of the effort to
comply with the Media's request.

17 The Court grants Metro the minimum period of six months to produce all of the
18 requested documents. Metro must begin its production of records to the Media within three
19 (3) business days from the date of this Order. Metro must make a rolling production, meaning
20 groups of documents must be produced as they become available. Metro must provide the
21 Media with an estimate of the allowable fees that are charged to the Media, consistent with
22 this Order, within three (3) business days from the date of this Order. The Media may pay
23 this amount in six monthly equal installments. The Media must pay each month at least one
24 sixth of the anticipated total charge at the beginning of each month of production.

25 . . .

26 . . .

27 . . .

28

1 The Court hereby sets a further Status Check for March 28, 2018 at 10:00 a.m. to
2 handle any lingering issues, to address any party's request for a modification of this Order,
3 and requests for any clarification.

4 **IT IS SO ORDERED.**

5 Dated this 9th day of March, 2018.

6
7 

8 RICHARD F. SCOTTI
9 DISTRICT COURT JUDGE

10 **CERTIFICATE OF SERVICE**

11 I hereby certify that on or about the date signed, a copy of this Order was electronically
12 served and/or placed in the attorney's folder maintained by the Clerk of the Court and/or
13 transmitted via facsimile and/or mailed, postage prepaid, by United States mail to the proper
14 parties as follows:

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Counsel for Respondent LVMPD

23
24 /s/ Melody Howard

25
26 Melody Howard
27 Judicial Executive Assistant
28